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OFFICE OF PETITIONS

In re Application of :
Donna L. Mendrick et al. :
Application No. 09/917,800 : ON PETITION
Filed: July 31, 2001 :
Attorney Docket No. 044921-5038 :
:

This is a decision on the "Petition For According The Filing Date Of A Timely Filed Response", filed January 5, 2006. The petition is treated under 37 CFR 1.182.

The petition under 37 CFR 1.182 is **GRANTED**.

In response to a non-Final Office Action mailed June 6, 2005, petitioners argue that they filed a response and a three month extension of time request on December 6, 2005. They further argue that due to typographical errors in the application serial number placed on the response and the extension of time request, the USPTO was unable to match the papers with the file. In support of the argument and the request to have the response filed December 6, 2005 considered timely, petitioners have submitted a complete copy of the response as well as a copy of the postcard receipt date stamped by the USPTO on December 6, 2005.

A review of the office records reveals that both the amendment and the extension of time request filed December 6, 2005 were incorrectly identified. The postcard receipt submitted as evidence of the timely filing of the response also bears an incorrect application serial number.

Minor errors in the identification of the application are usually corrected by the Office provided the correct identification can be quickly discovered. Examples of minor errors are transposed numbers, typographical errors, and listing the parent application number. While petitioner argues that the error in citing the correct application serial number on the response and extension of time was a typographical error, in this instance it wasn't easily able to make the connection between the application number cited and the intended application since the other identifying information (title of invention and name of the first named inventor) was identical in both the incorrect and the correct application.

However, although not a requirement, in view of the fact that the proper docket number and filing date were used on the response, extension of time request and the postcard receipt, submitted as proof of a timely response to the non-Final Office Action, petitioner has substantially complied with the requirements set forth in MPEP 503.

Each piece of evidence submitted by the petitioner, standing alone would not be sufficient for a conclusion that a response was timely filed. However, when viewed together, the totality of the evidence presented could point to a conclusion that an amendment was mailed and that the delay in having the amendment matched to the application file, was due to a typographical error.

To avoid abandonment of the instant application for failure to file a timely response to the non-Final Office Action mailed June 6, 2006, this decision will grant petitioner's request to have the time for reply extended to December 6, 2005 and the amendment filed on December 6, 2005 entered therefore as timely.

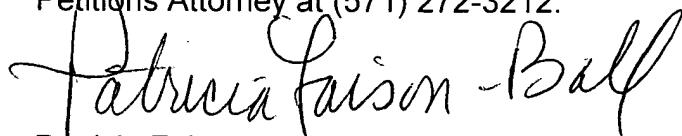
The papers incorrectly entered in the file of application no. 10/152,319 on December 6, 2005 will be properly moved to application no. 09/917,800.

It should be noted though that since this error was not one caused by the USPTO, a fee for treatment of the petition under 37 CFR 1.182 in the amount of \$400.00 will be charged to deposit account no. 50-1283, in accordance with the authorization contained therein.

Finally, since the address on the petition differs from the address of record, if it is petitioner's desire, petitioner should file a change of address in accordance with MPEP 601.03. A change of address can't be assumed by the noting of a different address found in a petition. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This matter will be referred to Technology Center 1631 for appropriate treatment of the amendment filed December 6, 2005.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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